

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

**JUDE AKUECHIAMA**

**Plaintiff,**

**v.**

**NEW PENN FINANCIAL, LLC AND  
REMY REAL ESTATE AND  
INVESTMENTS LLC**

**Defendants.**

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**CIVIL ACTION NO. 3:18-cv-103**

**NOTICE OF REMOVAL**

New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing removes the action Jude Akuechiama filed in the 56th Judicial District Court, Galveston County, Texas to the United States District Court for the Southern District of Texas, Galveston Division, pursuant to 28 U.S.C. §§ 1331 and 1441.

**I. STATEMENT OF THE CASE**

On March 27, 2018, Mr. Akuechiama filed suit in the 56th Judicial District Court of Galveston County, Texas in the case styled *Jude Akuechiama v. New Penn Financial, LLC and Remy Real Estate and Investments LLC*.<sup>1</sup> He seeks to rescind Shellpoint's March 6, 2018 foreclosure sale and stop Remy Real Estate and Investments LLC (**Remy**) from evicting him from the property at 2111 Yacht Harbor Lane, League City, Texas. Mr. Akuechiama asserts claims labeled: (1) breach of contract;<sup>2</sup> (2) common law fraud;<sup>3</sup> (3) promissory estoppel;<sup>4</sup> (4) violation of

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<sup>1</sup> See plaintiff's original petition, application for injunctive relief, and request for disclosures (**pet.**), **ex. 1**.

<sup>2</sup> See **pet.** ¶¶ 15-16.

<sup>3</sup> See **pet.** ¶¶ 17-18.

<sup>4</sup> See **pet.** ¶ 19-20.

the Real Estate Settlement Procedures Act/Regulation X (**RESPA**);<sup>5</sup> (5) breach of duty of cooperation;<sup>6</sup> (6) negligent misrepresentation;<sup>7</sup> and (7) suit to quiet title.<sup>8</sup> Mr. Akuechiana seeks actual, nominal and exemplary damages,<sup>9</sup> attorney fees,<sup>10</sup> and injunctive relief.<sup>11</sup>

## **II. BASIS FOR FEDERAL QUESTION JURISDICTION**

Under the "well-pleaded complaint rule," federal question removal is appropriate "when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). This court has federal-question jurisdiction under 28 U.S.C. §§ 1331 and 1441 because Mr. Akuechiana asserts violations of the RESPA.<sup>12</sup> The court has supplemental jurisdiction over the state law claims, if any, because they "form part of the same case or controversy." 28 U.S.C. § 1367(a).

## **III. THE PROCEDURAL REQUIREMENTS HAVE BEEN SATISFIED**

Remy's consent is not required because it has not been served according to the state court's docket. *See, e.g., Getty Oil Corp. v. Ins. Co. of North Am.*, 841 F.2d 1254, 1261 n.9 (5th Cir. 1988) ("Defendants . . . who are unserved when the removal petition is filed need not join in it."); *Brown v. Demco, Inc.*, 792 F.2d 478, 481 (5th Cir. 1986).

Removal of this action is timely under 28 U.S.C. § 1446(b) because it is being filed within thirty days of Shellpoint's receipt of the complaint, through service or otherwise. Venue is proper in this court because the United States District Court for the Southern District of Texas embraces the place in which the state court action was pending. 28 U.S.C. § 1441(a). Shellpoint provided notice

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<sup>5</sup> See pet. ¶¶ 21-24.

<sup>6</sup> See pet. ¶¶ 25-27.

<sup>7</sup> See pet. ¶¶ 28-30.

<sup>8</sup> See pet. ¶¶ 31-32.

<sup>9</sup> See pet. ¶¶ 33-35.

<sup>10</sup> See pet. ¶ 36.

<sup>11</sup> See pet. ¶¶ 39-44.

<sup>12</sup> See pet. ¶¶ 21-24.

to the state court regarding this removal. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all of the process, pleadings, and orders on file in the state court action are attached as **exhibits 1-7**.

#### **IV. CONCLUSION**

The court may exercise federal question jurisdiction over this action because Mr. Akuechiana asserts a claim for violation of RESPA and the procedural requirements are satisfied.

Date: April 6, 2018

Respectfully submitted,

/s/ C. Charles Townsend

C. Charles Townsend  
SBN: 24028053, FBN: 1018722  
charles.townsend@akerman.com

Bryan T. Brown  
SBN: 24055219; FBN: 946689  
bryan.brown@akerman.com

AKERMAN LLP  
2001 Ross Avenue, Suite 3600  
Dallas, Texas 75201  
Telephone: 214.720.4300  
Facsimile: 214.981.9339

**ATTORNEYS FOR DEFENDANT NEW  
PENN FINANCIAL, LLC DBA  
SHELLPOINT MORTGAGE SERVICING**

**CERTIFICATE OF SERVICE**

I hereby certify that on April 6, 2018, a true and correct copy of the foregoing instrument was served as follows:

**VIA CERTIFIED MAIL/RRR**

**NO. 9414 7266 9904 2066 3122 76**

Robert C. Vilt

Erick Delarue

Vilt and Associates, P.C.

5177 Richmond Avenue, Suite 1142

Houston, Texas 77056

/s/ Bryan T. Brown

Bryan T. Brown